

IN THE MATTER OF:

**STEVE WILLIAMS CONSTRUCTION,
LLC, and
THOMAS WILLIAMS**

RESPONDENTS

DIVISION OF WATER POLLUTION CONTROL

CASE NUMBER WPC07-0268

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

II.

Steve Williams Construction, LLC, (hereinafter Respondent Williams Construction) is an active corporation licensed to conduct business in the state of Tennessee and is the owner/developer of Summercrest Subdivision, a residential subdivision in Bradley County (hereinafter the 'site'). Service of process may be made on Respondent Williams Construction through Steve Williams, Registered Agent, at 1410 Weeks Drive NE, Cleveland, Tennessee 37312.

III.

Thomas Williams, (hereinafter Respondent Williams) is employed by Respondent Williams Construction and is the signatory authority at the site. Service of process may be made on Respondent Williams at 1410 Weeks Drive NE, Cleveland, Tennessee 37312.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a

location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VII.

Beech Springs Branch, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On November 5, 2004, a NOI, SWPPP, and appropriate fee were submitted to the Chattanooga Environmental Field Office (CHEFO) by Respondent Williams, requesting coverage under the TNCGP for construction activities at the site. No additional operators were identified on the NOI. The division issued coverage under the TNCGP on November 23, 2004.

IX.

On January 11, 2006, division personnel conducted a complaint investigation at the site and noted that construction activities had left the site unstable, Erosion Prevention and Sediment Control (EPSC) measures had not been installed, and that eroded material had migrated off site.

X.

On January 12, 2006, division personnel met Respondent Williams Construction at the site to discuss the implementation of the EPSC measures contained in the SWPPP. Respondent Williams agreed to begin implementation of the SWPPP requirements within two weeks and to install an additional sediment basin on site.

XI.

On January 18, 2006, the division issued a Notice of Violation (NOV) to Respondent Williams for the violations noted during the January 11, 2006, and January 12, 2006, site inspections. Respondent Williams was instructed to complete installation of adequate EPSC measures, including the installation of the additional basin within thirty days of receipt. Also on this date, the division received a complaint of continuing violations at the site.

XII.

On March 10, 2006, division personnel conducted a follow up site inspection to determine compliance with the January 18, 2006, NOV requirements. Some improvements in the EPSC measures were noted, although large areas of the site remained bare and unstable. The additional sediment basin had been installed but was undersized and ineffective in retaining sediment on site during a minimum two year, 24-hour storm event as required by the TNCGP.

XIII.

On March 17, 2006, the division issued a NOV to Respondent Williams Construction for the violations noted during the March 10, 2006, site inspection. Respondent Williams Construction was instructed to achieve TNCGP compliance within two weeks of receipt.

XIV.

On April 13, 2006, the division instructed Respondent Williams and Respondent Williams Construction to attend a Compliance Review Meeting (CRM) at the site on April 20, 2006.

XV.

On April 17, 2006, the division received a complaint of continuing violations at the site.

XVI.

On April 20, 2006, a CRM was held at the site. Present at this CRM were Respondent Williams Construction, division personnel and personnel from the Bradley County Engineering Department. Numerous erosion gullies were noted and a culvert designed to carry storm water away from the southern portion of the site, as well as three adjacent parcels, was clogged with accumulated sediment. Based on the storm water run off onto the site from three adjacent parcels, the following items were agreed to:

- An additional sediment basin was to be constructed in an existing ravine at the common boundary point of three of the four parcels. This construction was to commence at such time as the soils had dried sufficiently to allow heavy equipment access.
- Removal of accumulated sediment from the culvert was to commence at the same time soil conditions allowed heavy equipment access.
- The two existing sediment basins were to be enlarged to accommodate all storm water not captured by the basin required above.

- Bradley County Engineering Department personnel were to assist in the development of a storm water management plan for the remaining parcel contributing storm water run off onto the site.
- Bradley County Engineering Department personnel were to contact the Bradley County Sheriff's Department to determine how best to assist Respondent Williams Construction in preventing access to the site by off road vehicles.

These items were summarized in correspondence issued to Respondent Williams Construction on April 24, 2006.

XVII.

On October 26, 2007, the division received a complaint, which indicated that the items implemented after the April 20, 2006, CRM were ineffective.

XVIII.

On November 1, 2007, division personnel conducted a complaint investigation at the site and again noted that large areas of the site were bare and unstable and that the EPSC measures previously installed had not been maintained. Division personnel noted that the standpipe of the sediment basin constructed after the CRM of April 20, 2006, was oriented downward, limiting the amount of storage capacity in the basin. One of the two existing basins had not been maintained and division personnel noted a hole at the base of the standpipe, allowing sediment to be discharged off site. Sediment had accumulated almost to the design capacity in the second of the existing basins. The division issued NOVs on this date to both Respondents for the violations noted during the complaint investigation. The Respondents were instructed to install

appropriate EPSC measures within 14 days of receipt. The Respondents were also instructed to provide contact information for the individuals conducting the required EPSC inspections and post the NOC on site within five days of receipt.

XIX.

On April 15, 2008, division personnel conducted a site investigation and noted virtually no change in site conditions. Large areas of the site remained bare and unstable, erosion gullies had formed in the areas leading to the previously installed sediment basins, and sediment had accumulated in the basins past their effective design capacity. Division personnel noted that sediment continued to be discharged off site. A file review determined that neither Respondent had submitted the information requested in the November 1, 2007, NOV.

VIOLATIONS

XX.

By failing to comply with the terms and conditions of the TNCGP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XXI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures, specifically including but not limited to stabilization of all disturbed soils, such that sediment is not allowed to leave the site or enter waters of the state. These professionally designed measures shall be chosen and installed in accordance with the *Tennessee Erosion Control Handbook*.
2. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the CHEFO at Suite 550 – State Office Building, 540 McCallie Avenue, Chattanooga, Tennessee 37402, and a copy to the

Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.

3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 14 days of receipt of this ORDER AND ASSESSMENT, submit an updated NOI, SWPPP and site map to the CHEFO. The SWPPP and site map shall clearly indicate the boundaries of the site and the area of planned disturbance.
5. The Respondents shall pay a CIVIL PENALTY of THIRTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$48,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of entry of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of TWELVE THOUSAND DOLLARS (\$12,000.00).
 - b. If the Respondents fail to comply with Part XXI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00), payable within 30 days of default.
 - c. If the Respondents fail to comply with Part XXI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00), payable within 30 days of default.
 - d. If the Respondents fail to comply with Part XXI, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00), payable within 30 days of default.

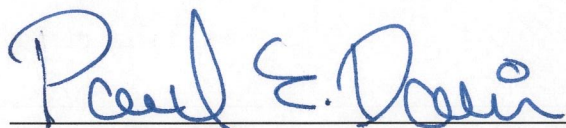
- e. If the Respondents fail to comply with Part XXI, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00), payable within 30 days of default.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 24th day of April 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.